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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,739	01/27/2004	Umit Turunc	D4670-00029	1100
8933	7590	07/26/2007	EXAMINER	
DUANE MORRIS, LLP IP DEPARTMENT 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196			TOOMER, CEPHIA D	
			ART UNIT	PAPER NUMBER
			1714	
			MAIL DATE	DELIVERY MODE
			07/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/765,739	TURUNC ET AL.	
	Examiner	Art Unit	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the amendment filed May 1, 2007 in which claim 1 was amended; claims 6-8 were canceled and claims 10-15 were added.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,576,056).

Roe teaches a coal oxidation inhibiting composition comprising an aqueous solution of water-soluble cationic polymer (see abstract). The preferred cationic polymers are diethylaminetriamine/adipic acid/epichlorohydrin or aminomethylated polyacrylamide (see col. 2, lines 43-45). In the preferred method the aqueous solution contains an anionic foaming agent (see col. 2, lines 45-48). The solution is applied as a coating over the exterior surfaces of coal (see col. 2, lines 43-45). The anionic foaming agents may be alpha-olefin sulfonates (see col. 3, lines 15-21). The composition comprises 0.05-20 wt% water-soluble cationic polymer and from 75 to 99.9 wt% water (see col. 3, lines 34-37).

Roe does not specifically teach that the coal pile is a surface mine. However, no unobviousness is seen in this difference because Roe is not limited to where the coal piles may be located.

With respect to applying the coating with out a foaming agent, Roe teaches that he prefers to apply the composition as foam but such method of application is not required.

3. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,576,056) in view of Zinkan (US 4,801,635).

Roe fails to teach the claimed anionic surfactants. Zinkan teaches a composition and method for dust control comprising an aqueous medium containing 0.5 to 25 parts by weight of an anionic surfactant and 1-35 parts by weight of a nonionic polyoxy alcohol cosurfactant (see abstract; col. 2, lines 35-40). The most preferred water-soluble nonionic surfactant is alkylphenol polyoxy alcohols. The anionic surfactant may be sulfates, sulfonates or dialkyl sulfosuccinates. This teaching suggests dioctyl sulfosuccinate (see col. 4, lines 32-39, 56-61).

It would have been obvious to one of ordinary skill in the art to replace the sulfates or sulfonates of Roe with the dialkyl sulfosuccinates of Zinkan because to substitute one anionic surfactant for another is prima facie obvious.

With respect to applying the coating with out a foaming agent, Roe teaches that he prefers to apply the composition as foam but such method of application is not required.

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4. Claims 10-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of JP 2000-096040.

Roe has been discussed above. Roe fails to teach the addition of a non-ionic surfactant. However, JP teaches this difference.

JP teaches a method of preventing oxidation of coal by applying a stabilizing agent comprising an alkylphenol ethoxylate of the formula $RO(C_2H_4O)_nH$ wherein R is alkylphenyl where the alkyl group has 8-22 carbon atoms and n is 3-10. JP also uses anionic surfactants such as sulfonates (see abstract; paragraphs 0007 and 0009).

It would have been obvious to one of ordinary skill in the art to include the alkylphenol ethoxylate in the coal oxidation inhibiting composition because JP teaches that the nonionic surfactants aid in stabilizing the coal. With respect to JP not teaching a mixture of nonylphenol and octylphenol ethoxylate, it is prima facie obvious to combine two compounds each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

With respect to applying the coating with out a foaming agent, Roe teaches that he prefers to apply the composition as foam but such method of application is not required.

Response to Arguments

5. Applicant's arguments have been fully considered but they are not persuasive.

6. Applicant's arguments and the declaration submitted by Umit Turunc have been considered but are not persuasive.

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Applicant argues that the compounds and composition of the relevant prior art are applied to coal that has already been mined whereas the coal of the present invention is at a surface mine.

Roe is not limited as to the location of the coal pile. Roe teaches that his invention is directed to the inhibition of coal oxidation by coating the exterior surface of the coal with the claimed composition (see col. 1, lines 5-10, 49-52; col. 2, lines 41-44). This teaching encompasses all coal piles subject to oxidation at any location.

Applicant argues that any compound or composition applied as a foam or spray would not be effective in penetrating the interstices of a coal pile.

Roe teaches that he prefers to apply the composition as a foam. However, Roe is not limited to foam composition as shown in Example I and claims 1-4.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

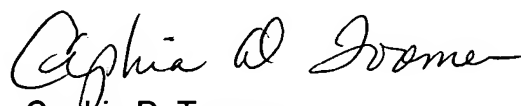
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Cephia D. Toomer
Primary Examiner
Art Unit 1714

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